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No. 85-794

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1985

PREUIT & MAULDIN, a partnership; and E. F. MAULDIN, individually and as Executor of the estate of Leonard Preuit, deceased; and PREUIT MAULDIN,

Petitioners

v.

SAMUEL JONES, JR.,

Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF OF AMICUS CURIAE STATE OF ALABAMA IN SUPPORT OF PETITIONER

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BRIEF OF AMICUS CURIAE STATE OF ALABAMA IN SUPPORT OF PETITIONER

INTEREST OF AMICUS CURIAE

The State of Alabama, through its Attorney General, offers this brief as amicus curiae in support of the petition for writ of certiorari sought by Preuit & Mauldin, et al.

This is a 42 U.S.C. § 1983 action challenging the constitutionality of Alabama's pre-judgment attachment procedure. The

specific question presented is which state statute of limitation is applicable to such a § 1983 civil rights action.

The lower court's decision and this court's decision on the issue presented could materially and drastically affect the State of Alabama and all its departments, officers and employees. Thousands of officers and employees of the State of Alabama take action daily under color of state law and thus subject themselves and the State to suit under 42 U.S.C. § 1983. The State of Alabama, through its Attorney General, must defend well in excess of one thousand new such suits annually. If the lower court ruling stands, the limitation period on civil rights actions will be increased from two to six years. It can thus be expected that the number of such suits filed will be substantially increased and that the state's burden in defending such suits, the overwhelming majority of which are

unfounded if not trivial and frivilous, will likewise be substantially increased. Although the State rarely looses one of these suits, when it does Plaintiffs' attorney's fees are generally taxed against the S ate or its agencies. Thus the State of Alabama and its Attorney General are vitally interested in which statute of limitation is applicable to civil rights actions.

ARGUMENT

This Court held in Wilson v. Garcia, ____ U.S. ____, 105 S.Ct. 1938, 85 L.Ed.2d 254 (1985) that 42 U.S.C. § 1983 civil rights claims are best characterized as personal injury actions for state statute of limitation purposes. The narrow question presented to this Court for review is what kind of personal injury action limitation should apply. Alabama, like several other states, has two separate statutes of limitation governing personal injury actions. First, Alabama has a six-year limitation on "actions on any trespass to persons or liberty, such as false imprisonment or assault and battery".[1] This is a narrow limitation applicable only to direct intentional trespass injuries. Second, Alabama has a two-year limitation on "all actions for any injury to the person or rights of another not arising from contract and not

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[1] Code of Alabama 1975, § 6-2-34(1)

specifically enumerated in this section."[2] This limitation is much broader than the six-year limitation on trespass actions, and is applicable to indirect, trespass-on-the-case injuries. The Eleventh Circuit, in its opinion in this case, held that the narrow two-year limitation on direct trespass injuries is applicable to § 1983 actions in Alabama.

I. THE DECISION BELOW CONFLICTS WITH DECISIONS OF OTHER COURTS OF APPEALS

As Petitioners have argued, the decision

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[2] Code of Alabama 1975, § 6-2-38(1). At the time this action arose and was brought in the district court, the language quoted was found in § 6-2-39(a)(5) and provided for a one-year limitation on such actions. On Jan. 9, 1985, however, the Governor signed Act 85-39 which repealed § 6-2-39 and changed the statute of limitations for "any injury to the person or rights of another" to two years by incorporating that langauge into § 6-2-38, which enumerates actions for which there is a two year limitation. The material and operable language of the old and new statutes are the same. The only substantive difference is the length of time within which an action must be brought. For purposes of this brief we will speak of the new two-year limitation.

below conflicts with the decisions of the Tenth Circuit. The decision is in direct conflict with Hamilton v. City of Overland Park, 730 F.2d 613 (10th Cir., 1984), (en banc), cert. denied, __ U.S. __, 105 S.Ct. 2111, 85 L.Ed.2d 476 (1985); Mismash v. Murray City, 730 F.2d 1366 (10th Cir., 1984) (en banc), cert. denied, __ U.S. __, 105 S.Ct. 2111, 85 L.Ed.2d 476 (1985); McKay v. Hammock, 730 F.2d 1367 (10th Cir., 1984) (en banc), and the seminal case of Garcia v. Wilson, 731 F.2d 640 (10th Cir., 1984) (en banc), affirmed, ____ U.S. ____, 105 S.Ct. 1938, 85 L.Ed.2d 254 (1985). Petitioners have quite sufficiently set forth their arguments, and amicus will not repeat them. We will point out that the Eleventh Circuit in its opinion made no effort to reconcile its decision with those of the Tenth Circuit, but ignored the conflict. The conflict is not a minor, reconcilable or tolerable difference; but is a conflict that most deserves this Court's attention.

II. THE DECISION BELOW IS INCONSISTENT WITH A PRIOR DECISION OF THIS COURT

As petitioner has argued, the decision below is inconsistent with Wilson v. Garcia, ____ U.S. ____, 105 S.Ct. 1938, 85 L.Ed.2d 254 (1985). Again, amicus will not repeat Petitioner's arguments in this regard. We will, however, make one additional point.

This Court in Wilson, in support of its holding that civil rights actions are best characterized as personal injury actions, observed that "general personal injury actions, sounding in tort, constitute a major part of the total volume of civil litigation in the State courts today." The great bulk of personal injury lawsuits in Alabama as elsewhere are not trespass actions, but are indirect, trespass-on-the-case actions. It is apparent that this Court in Wilson contemplated application of state limitations on trespass-on-the-case actions to Federal civil rights claims. The decision below, in holding

the period of limitation for trespass actions applicable to § 1983 claims, is thus inconsistent with Wilson.

III. THE DECISION BELOW PRESENTS A SUBSTANTIAL QUESTION OF FEDERAL LAW THAT SHOULD BE REVIEWED BY THIS COURT.

As Petitioners point out, at least eighteen states have different periods of limitation for general personal injury actions than for assault and battery trespass actions. These eighteen states lie in eight different circuits. No doubt the same question about the interpretation of Wilson raised in this case will continue to be raised in these other circuits.

The application of a uniform rule for determining what state statute will apply in § 1983 cases is as important today as it was when this Court granted certiorari in Wilson. In order to give Wilson any real meaning uniform application in the eighteen states

with dual limitation periods for personal injury actions, it is important that the Supreme Court address the issue raised in this case.

CONCLUSION

For the reasons stated by Petitioners and for the reasons stated above, writ of certiorari should be granted.

Respectfully submitted,

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